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S. C. [SESSION OF 1856.

Cal.
R E P O R T

OF S

California . Legislature . Assembly .

SELECT COMMITTEE

IN RELATION TO

U. S. LAND COMMISSIONERS.

JAMES ALLEN, STATE PRINTER.

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JOINT RESOLUTIONS.

RESOLVED, by the Senate and Assembly of the State of California, That our Senators be instructed, and our Representatives be requested, to use their influence to obtain a modification of the Act of Congress of 1851, organizing the United States' Board of Land Commissioners for this State, so far as to prevent the issuance of a patent to claimants in all cases where the rights were imperfect, inchoate and incomplete at the date of the conquest of California.

Resolved, further, That they be requested to urge the adoption of such measures, by legislation or otherwise, as will prevent the location of all unlocated or floating grants, on other than unoccupied lands.

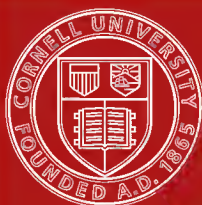
Resolved, further, That they be requested to urge the adoption of such measures, by legislation or otherwise, as will make the duties of United States' Surveyors fixed and certain, giving them no discretion in locating grants.

Resolved, further, That they be requested to urge the adoption of such means, by legislation or otherwise, as to bring into market all the agricultural lands of this State, the legal title of which is in the United States.

Resolved, further, That they be requested to urge the adoption of such means, by legislation or otherwise, as to secure a subdivision of all the agricultural lands of this State, irrespective of any claim of title in private parties.

Resolved, further, That His Excellency, the Governor, be requested to transmit a copy of these resolutions to each of our Senators and Representatives in Congress.

Resolved, further, That they be requested to urge the adoption of such measures as will secure the appointment of some competent person as assistant counsel, to take charge of the land cases on appeal from the Boards of U. S. Land Commission, and now pending before the U. S. District Court of this State.



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R E P O R T .

MR. SPEAKER :

The Select Committee to whom was referred the joint resolution, offered by Mr. Heald, on February 9th, have had the same under careful consideration, and unanimously agree to report the same back to the House, with an additional resolution, together with their reasons for recommending their passage.

The resolutions embody principles of much importance, and we approach the subject with a consciousness that the instructions proposed, if carried into effect, would work so radical a change in the distribution of much of the real property in this State, that the proposed amendments cannot be carried into effect without violent opposition from a small but influential class of our fellow citizens.

The Act of Congress of 1851, organizing the Board of U. S. Land Commissioners, is one of the most important ever passed by that body, in its influence in this State. It provided for a review of all the land titles in the State originating with the Spanish or Mexican Governments. No title was so perfect as to preclude the necessity of passing it through the Commissioners, and none so weak that the claimant might not hope for a favorable termination of his efforts to obtain a confirmation of his claim.

The Act was unlike any other ever passed by Congress for the settlement of land claims. The treaty under which the United States acquired the Territory of Florida, contained a provision as follows :

“All the grants of land made before 1818, by His Catholic Majesty, or by his lawful authorities in the said Territories, ceded by His Majesty to the United States, shall be ratified and confirmed to the person in possession of the lands, to the same extent that the same grants would be valid if the Territories had remained under the dominion of His Catholic Majesty.” Accordingly, Congress, from time to time, enacted laws to carry into effect that treaty obligation. Boards of Commissioners were established, with powers to inquire into and report to Congress the nature and state of such titles as were submitted to them ; but the final confirmation was referred to Congress, and all imperfect, inchoate and incomplete claims were regarded by our Government as equities which might be ripened into perfect titles by legislative action ; but, until that action was taken, the Government of the United States was regarded as the legal owner, and might dispose of the lands as such. This doctrine was first laid down by the Supreme Court of the United States, in the case of *Foster and Elum v. Nelson*, 2 Peters’ Rep. page 314, and the same doctrine has since been repeatedly re-affirmed. The treaty stipulations, under and by virtue of which we acquired that Territory, required the satisfaction of those claims, and our Government, from time to time, devised means to pass the titles of lands to such claimants as could show a

standing in a Court of Equity sufficient to entitle them to relief. Those rights having their foundation in a policy, unlike the American system of the distribution of public lands, were always considered inimical to the best interests of the people.

The true policy of a government is pointed out in our land laws, parceling out lands in small quantities to actual settlers. Thus a given territory will support a dense population—the aggregate width of the Nation is increased; the laborer becomes the owner of the soil, and is thus more firmly attached to his home and the institutions of his country. When his country is invaded and he is called into active military service, he feels that he is fighting for his fireside; and if his country needs his aid in the way of furnishing the means of improvements, he has a common interest with the community in which he resides, and the government never calls in vain for his aid. The land system established in Spain and Mexico is the opposite of our own. They distributed land to the few; we to the many. They gave in large quantities; we in small. They gave the right to a lord and depended on him to people his territory with underlings; we gave to the laborer, thus making him the lord of the soil. Our system induces a dense population; theirs keep it sparse. Ours gives strength to the Government; theirs keep it weak; and finally, our system is well calculated to perpetuate our Government, while theirs lie at the foundation of their decline and inevitable ruin. The Senate of the United States was not unmindful of the evil they might entail upon this country by engraving upon the Treaty of Guadalupe Hidalgo, a provision requiring the perfection of imperfect grants. The tenth Article of that Treaty contained such a provision, but the Senate struck it out and refused to ratify the Treaty with that provision incorporated. The Mexican Government yielded, and thus that step tended to the establishment of the American system.

The Treaty left rights in lands where it found them, in the same manner as it left titles to other property. Whatever property any person possessed was protected by the laws of nations; but there was no obligation imposed by the Treaty requiring imperfect grants to be perfected. As a matter of policy then, which system ought our Government to adopt, the American or Mexican? She is free to adopt either. If our Government finds the claim of a grantee to eleven leagues of land incomplete, ought she, as a matter of policy, to complete it, and thus, in effect, grant according to the Mexican policy? or ought she to refuse to complete such claim and bring the land into market, and thus carry out the American system?

The Act of 1851, diverging from the line of policy pointed out by the Senate of the United States, which struck out the tenth Article of the Treaty. That tenth Article provided for the perfecting of the inchoate titles by means of a patent, to pass the legal title to private parties. Thus the claimants obtained, by means of that Act, what they could not obtain by treaty. But, it may be said, that rights become vested in private parties, by nature of those Mexican concessions, and to refuse to ratify them would be equivalent to confiscation. This position would be true if the titles had become *vested* in the claimants. The Supreme Court of the United States discussed this matter in giving their opinion in the case of *Menardis v. Massey*, 8 Howard's Rep. page 306, in reference to the land acquired by treaty, by means of which Louisiana was acquired.

As answered in argument (and truly) by the third Article of the Treaty by which Louisiana was acquired, and by the laws of nations, the inhabitants of the ceded territories were entitled to be maintained and protected in the free enjoyment of their property. But in what property, to such an interest in it? If lands as they had when the country changed owners, and that interest being of a character requiring legal sanction, before the Spanish Government would recognize it as divesting the public title. Our Government, as the successor of Spain

to the public lands, gave the same construction and effect to concessions and orders of survey, holding that the title of the King's domain passed by treaty to the United States, notwithstanding the existence of such concessions; yet to the full extent of any equity in the claimants, the Government adopted means to satisfy the claims; and as the sovereign power could not be sued as legal owners, Boards of Commissioners were created with liberal powers, to investigate every description of claims and report on them to Congress for the sanction of sovereign authority; and by this means many claims were confirmed, the legal title added, and incipient concessions were completed into perfect and complete titles against the Government. Then, again, Congress provided special courts should be organized, in which the Government might be sued in a prescribed form, and decrees might be made for or against claimants; but no suit should be maintained in an ordinary action of ejectment, or for title of any kind, on a concession and an order of survey, for want of legal title to sustain it. Such claimants were not regarded as owners of land until the real title was delivered and completed in the language of the Spanish Regulations, No. 18. Had the courts of justice been allowed to hold otherwise and to interfere in the matter, and to decree titles to claimants in equity, or to enforce their claims at law, and oust the United States indirectly, by leaving persons found on the land, little or no occasion would have existed for boards or special courts to adjudge respecting the validity of claims, as the ordinary tribunals would have settled all controversies under State laws, declaring such claims cognizable in State courts. It was, therefore, manifest that claims resting on the first incipient steps, must depend on their sanction and completion upon the sovereign powers; and to this course claimants had no just cause to object, as their condition was the same under the Spanish Governments. No standing, therefore, in an ordinary judicial tribunal has ever been allowed to these claims until Congress confirmed them and vested the legal titles in the claimants. Such, undoubtedly, is the doctrine assumed by our Legislature.

Thus it will be seen that those grants which required confirmation, were considered incomplete and could not be enforced until the Government had performed its part of the contract and perfected the claim by the issuance of a patent.

The question in the above cited case, arose between a purchaser from the United States and a claimant under the Spanish Grant. The grant had been finally confirmed, and the question was, did the title pass to the purchaser, notwithstanding the grant? and the Court held the affirmative.

That decision affirms the doctrine, that imperfect titles do not prevent the United States from disposing of the land claimed. Indeed, if the claimant had a perfect title, a vested right, there can be no necessity for a confirmation, as ordinary courts of justice will enforce such titles, and no Act of Congress can compel a party to suspend his rights.

The whole system of action under the Act of 1851, proceeds upon the hypothesis that titles are incomplete and should be completed.

Your Committee submit, that this Act of 1851, instead of being necessary to carry out the provisions of the Treaty, is in violation of its spirit, as well as of the true policy of our Government in the distribution of lands. But it may be said that the Board of Commissioners have finished their business and the mischief has been accomplished.

To what end, then, shall we modify the Act organizing that Board? This argument would be of force if the operations of the Act of 1851 ceased with the terminations of the labors of the Board. Nearly five years have elapsed since the passage of the Act, and no patent has as yet been issued under it. Only three cases have been finally decided; and all other cases lately pending before the Boards, are either pending in the District or Supreme Courts; and those three have not yet passed to a patent.

The repeal of the law would leave the grants as they now stand, with all their imperfections, without amendments or additions; and such grants cannot be enforced without an unauthorized change in the course of decisions of courts.

Large amounts of the best lands in the State are claimed under these incomplete titles. These lands have been, in many instances, settled upon as public domain. Hamlets, towns and cities have sprung up, and if these titles should be perfected, these settlers will either be driven from their homes, or be compelled to purchase their lands at a value they have enhanced by their own improvements. We submit, that justice and a sound policy dictate that our Government should not pursue a course so plainly at variance with the best interests of the country. If holders of Spanish claims have such equities that require from our Government a compensation, let it be given in money, the payment of which cannot be felt beyond the mere press of taxation. But to entail upon this State a landed monopoly, such as must exist under the present law, will be a wrong more blighting than any other social evil which could be fastened upon us by legislation.

The third resolution offered proposes to instruct our representatives to urge the adoption of such measures as will prevent unlocated grants from being located on any other than unoccupied lands. This resolution has been in part discussed in this report. All unlocated concessions are necessarily imperfect, and should not be perfected merely by the means of locating, but there is a hardship peculiar to this class of imperfections, worthy of particular note. A very large class of grants are of this character. A small amount of land is conceded to be taken from a much larger tract; such concessions are held by the present Board of Commissioners to be good grounds for the rejection of a claim, and for a very good reason. The idea of a grant must be inseparable from the thing granted; if that thing cannot be identified, the grant, so far as courts of law are concerned, has been held void. Before it is located by the granting power, it has no static in court. The Fremont claim may be cited as an instance, where there were ten leagues granted within boundaries of one hundred leagues. Any ten leagues within these boundaries were liable to be taken. Parties wishing to occupy any part of that one hundred leagues could not ascertain and conform to a location yet to be made, and if the claimant is allowed to select what part he will take, he would of course claim the most valuable, even if that value was placed there by the occupant. The consequence is, the settlement of the country will be retarded, and the development of its resources delayed.

That law is most certainly wrong which allows such an impediment to the prosperity of the country to exist. If the claim of Fremont stood alone, the matter could be endured, but throughout the length and breadth of our State, grants have sprung up as if by magic; and where the civilized Spaniard never set foot prior to the conquest of this country, grants are to be found, and under the laws as it now stands, such claims may be made operative.

The third resolution proposes to take away all discretion from the Surveyor-General in the location of grants. The duties of a Surveyor should be confined to the business of his profession. He is, or should be, selected because of his fitness to perform the duties of a Surveyor. It was never intended that he should be invested with the power to locate grants at his will, or the will of the claimants. If such was the intention, the laws should be changed. It is too much power to place in the hands of one man, when that power is not the subject of review.

To show the practical operation of the law, we refer to a letter from one of the Deputy Surveyors under Col. Hays, the present U. S. Surveyor-General for California, wherein he proposes for a consideration, to locate a grant owned by Mr. Reddan, so as to exclude the township named by him, thus leaving the settlers in that township free from the grant.

When the value of the improvement is immense, the temptation to act from mercenary motives is strong ; and in this country, if the Surveyor-General shall retain that authority in a very large class of grants, he is virtually the granting power. When mountains are made boundaries, he can in discretion run the lines to the foot, and take agricultural lands ; or, he may extend them into the mountains, when that course would give the claimant the benefit of mineral lands. The instructions of the Department at Washington show the construction placed on the law by our Government. We contend that the law is radically wrong, and should be reformed in the particular indicated in the resolution.

Your Committee have had under consideration the resolution proposing to subdivide the agricultural lands of this State, according to the Government surveys, irrespective of the existence of grants. Such subdivision is deemed necessary for various reasons. A large class of grants, and perhaps all, to a greater or less extent, are uncertain in their limits. The land must either remain unsurveyed, or the limits of the grants must be ascertained. So long as the boundaries of grants are uncertain, so long must the surveys be incomplete. The expense, it is believed, would be but little, if any more, to divide the lands into sections than to ascertain and locate the boundaries of grants, and then sectionize the residue. Many advantages arise from a complete subdivision, and it is believed no disadvantage can arise therefrom.

The purchaser or settler will thus have an easy and exact method of description for his lands. If it is Government lands, lines should conform to proper surveys. If it is, or shall afterward become private property by the issuance of a patent founded on a Mexican concession, no injury has happened to any one, and if the settler desires to purchase his claim, there is no conflict of lines to prevent a speedy adjustment. Especially is this course necessary when the claims are floating.

Your Committee are of the opinion that lands should be treated in all respects as public when there are no grants located. This will exclude floating grants from any standing, until they shall become fixed, and in that case the grantee would take, subject to rights acquired by pre-emption. If the legal title exist in the United States, then those subdivisions will enable the settler to pre-empt his quarter section without the fear of a change in survey, which would compel him to alter his improvements to conform to a subsequent survey.

Another evil under which our rural population suffer, is the failure of the General Government to bring her public lands into market. Five years have elapsed since the Surveyor-General commenced subdividing the public lands of this State, and no land has thus far been brought into market. This results no doubt in part from the difficulty in ascertaining what are public lands. But if the proposed modification of the law of 1851 should be accomplished, a large amount of property claimed, the legal title to which is yet in the United States, would be brought into market and sold ; and if the claimant had demands in equity, the government would find means to satisfy them, either by direct payment in money, or permitting them to enter unoccupied lands, for a claim of this kind should not be allowed to retard the growth of the country.

The subdivision of the lands in the State are of great moment to the citizens, by having permanent monuments established and preserved, and by astronomical observations of the lines which would be the boundaries of small tracts of lands. The want of systematic surveys in many of the States of the Union, have engendered feuds and suits innumerable, from the want of uniformity of surveys.

The system was early adopted in Ohio, of subdividing into townships, sections, quarters, eighths, and sixteenths, forty acres being the smallest subdivision. This was looked upon as one of the great advantages which that State possessed over Kentucky, in the permanence of her American land system.

When the standard lines are completed through the mining region, and the subdivisions made in the agricultural, the State can then arrive at the number of sections of public land embraced in her limits, and be enabled to select the sixteenth and thirty-sixth sections for school purposes, out of the agricultural lands, or lands subject to private entry. According to the Act of Congress, provision has been made, where the school lands should fall upon sections that are of small value, other lands can be substituted in lieu of them. It is of great importance that the school lands should be selected at an early day, in order to accumulate a fund sufficient to aid in carrying out the purposes for which it was intended. It would also aid in the location of grants that may hereafter be confirmed. The Commissioner-General of the Land Office, Mr. Butterfield, in his report to Congress in 1849, says, in relation to private land claims: "The other class in which there is embarrassments, is more formidable, and requires the interposition of Congress. It consists of cases in which there is such a vagueness and uncertainty of description, that it is extremely difficult, if not impossible, to make a location with any degree of certainty as to correctness. I renew the recommendation heretofore made, that the department be empowered by law summarily to locate all claims of this class, *according to the lines of public surveys in legal subdivisions*, having a due regard to ancient and permanent improvements where they exist. Giving the owners a year from the time of certifying the location, within which to show cause, if any, why a different location should be made; in default of which, or of application for a hearing within the time mentioned, the location to be forever binding, both upon the claimants and the United States. Such a measure will enable the Department to close up cases of this class, which otherwise would remain unsettled, and hang in suspense over the State for an indefinite period, operating alike detrimental to the public and private interest."

No injustice could result to any parties interested in lands, but a benefit would result to all in having permanent landmarks established throughout the State. A subdivision of our lands may be ranked in simplicity to our currency, so much the admiration of all. In the report of the Commissioner of the General Land Office of 1854, is the following history: "The land system was originated by Jefferson and fashioned into form by that great statesman, aided by Livingston, Gerry, Howell, Read, Williamson, Long, King, Johnson, Stewart, Gardner, Henry, Grayson, Ball, Huston and Monroe. In the enactment of the ordinance of 1785, 1800 and 1805, the nation had the benefit of the wisdom and patriotism of the sages, who, under heaven, founded our free and happy government—the advancement of the public interest was the only object sought. The heavy debt of the Revolution, pressing on the young Republic, required liquidation, and every means at the disposal of the government was carefully and judiciously applied to that object. Among these, the public lands was considered a pre-eminent and permanent interest.

This system of square surveying has stood the test of over half a century, (with very few cases of disputes,) where the work has been executed by skillful Surveyors. And we would say that the subdivision of the agricultural lands will in a measure save the people of this State endless litigation in regard to their boundaries.

The resolution which your Committee propose to annex to the series, if carried into effect, will be of advantage to the Government, and of the greatest importance to the best interests of this State, and relieve District Attorneys of the arduous duties imposed upon them. Many of the causes which are referred to in the resolution, are of the greatest magnitude, and the final result will in a measure depend upon the care exercised in preparing them in the District Court. The District Attorneys in their respective districts have to devote a very considerable portion of their time to ordinary duties in said courts, and it is impossible.

for them to give those land cases the attention that is absolutely necessary to secure a fair adjustment of the questions involved. From the recent decisions in the Fremont and Ritchie cases, it appears that *settlement* and *identification* are not necessary to secure success, and those cases which are simulated and fraudulent, stand about the same chance of confirmation as those made in good faith, as the simulated character of the papers are very difficult of proof. Your Committee believe that this appointment would be more particularly necessary in the northern districts, as they are of opinion that grants of a fraudulent character are numerous in that district. A single person claims sixty-three leagues of land in this State, under different titles, not one of which was known to the Californians in the district where they are located, prior to the time they were filed before the U. S. Land Commissioners. This may be an extreme case, but other cases of a similar character exist, covering hundreds of leagues of the best lands of the State, and now settled upon, and improved by parties under other titles, or believing them to be government lands. Such cases, without efficient action on the part of Government, must, under the ruling of our courts, be confirmed. Those matters could not be thoroughly tested before the Commissioners in all cases, because, 1st, The agents of the government were compelled to take charge of eight hundred and thirteen cases and act thereon, both as counsel and outdoor agents. 2d. The first three agents did not remain in office a sufficient length of time to become familiar with their cases and the archives, and the last came into office after a large number of cases had been disposed of. 3d. Because many of the spurious grants were rejected by the Commissioners for want of testimony, with the views on the part of the claimants to put in testimony in the cases in the District Court, thus preventing a scrutiny of their genuineness, and in the District Court they will be hurried through when the District Attorney has but little time, and inadequate means to detect them. For the foregoing reasons, we submit that a person should be selected to conduct those cases in the District Court, whose knowledge of the grants would enable him to detect and defeat those grants not genuine. As matters now stand, little effort is made in the District Court to detect spurious papers, the original not being in court; a copy of a forged document does not enable the District Attorney to detect the forging, and we recommend the passage of the resolution, that suitable aid may be appointed.

A precedent for such employment may be found in the appointment of Col. White in 1828, to attend to claims of land in Florida.

Your Committee would respectfully submit the foregoing as the result of their investigation, and deem the importance of the subject a sufficient justification for thus elaborately setting forth their views.

W. G. HEALD,
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LANSING STOUT.

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